IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 28.03.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal Nos.226 & 227 of 2004
and
WAMP.No.365 of 2004

M/s Armcess Engineers (P) Ltd.,
A Super 8 & 9 Industrial Estate,
Guindy, Madras-32. .. Appellant in both WAs

Vs.

1.The Regional Provident Fund
Commissioner, The office of the
Regional Provident Fund Commissioner,
Tamil Nadu and Pondicherry States,
20, Royapettah High Road,
Chennai-600 014.

2.The Union of India,
rep. by the Secretary,
Department of Labour & Employment,
New Delhi. .. Respondents in both WAs

Writ Appeals filed under Clause 15 of the Letters Patent against the orders dated 28.07.2003 made in W.P.No.17963 of 1995 and 17962 of 1995 respectively.

W.P.No.17963 of 1995:-

Petition under Article 226 of the constitution of India to issue a Writ of declaration, declaring that the 2nd Proviso to Sectio 14B of the Employees Provident Funds Miscellaneous Provisions Act 1952 introduced/amended by Act 33 of 1988 is unreasonable arbitrary void and unconstitutional for isolation of article 14 of the Constitution of India.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

WP.No. 17962 of 1995:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records in proceedings in Ref.No. TN/MS/1834/SDC3/Accts/95/1102 and to quash the order dated 15.12.95 in the said proceedings on the file of first respondent and pass such further or other orders.

For Appellant : Mr.Ranganatha Reddy for M/s King & Partridge.
For Respondents : Mr.K. Gunasekaran, ACGSC

JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM, J.)

Aggrieved by the orders of the learned single Judge dated 28.07.2003 made in W.P.Nos.17963 of 1995 and 17962 of 1995 respectively, M/s Armcess Engineers (P) Ltd., Guindy, Madras-32, has filed the above writ appeals.

2. Heard the learned counsel appearing for the appellant as well as the respondents.

3. In view of the limited question raised, we are of the view that it is unnecessary to traverse all the factual matrix as stated by both the parties.

4. Learned counsel appearing for the appellant, by drawing our attention to the grievance of the appellant-petitioner as stated in para 4 of the affidavit filed in support of W.P.No.17962 of 1995, has submitted that in view of precarious financial condition being faced by the appellant, the first respondent is not justified in ordering damages. He also contended that the learned single Judge having referred to the present financial position of the writ petitioner-appellant, ought to have substantially reduced the quantum of damages as fixed by the Regional Provident Fund Commissioner.

5. On the other hand, the learned counsel appearing for the respondents, by drawing our attention to the statutory provisions viz., 14-B of the Employees' Provident Funds and Miscellaneous Act, 1952 and paragraph 32-A of the Employees' Provident Funds Scheme 1952, submitted that the request of the petitioner/appellant cannot be acceded to and both the writ appeals are liable to be dismissed.

6. In the light of the submissions made, we have verified the factual details and the grievances as stated in the affidavit filed in support of the above writ petitions and also the statutory provisions

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

referred to above. It is not in dispute that the contributions were not made within the prescribed time and in the event of delay or default, the authorities are entitled to recover the damages. The mode of recovery rate of penalty/damages have been prescribed in para 32 of the Employees' Provident Funds Scheme 1952. In view of the limitations prescribed in para 32-A of the Scheme and of the fact that the learned single Judge, considering the grievance of the petitioner, has already reduced the damage rate from 15% to 12%, we are of the view that no further reduction is either possible or admissible. Accordingly, both the writ appeals fail and they are dismissed. No costs. Consequently, WAMP No.365 of 2004 is also dismissed.

raa

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Regional Provident Fund
Commissioner, The office of the
Regional Provident Fund Commissioner,
Tamil Nadu and Pondicherry States,
20, Royapettah High Road,
Chennai-600 014.

2.The Secretary,
Union of India,
Department of Labour & Employment,
New Delhi.

+ 2 ccs to M/s King and Partridge Advocates Sr 19716 and 19717
+ One cc to Mr. K. Gunasekar ACGSC SR 20382
VC (co)
sg 4/4/07

W.A.Nos.226 & 227 of 2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/